

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action mailed January 13, 2005. At the time of the Final Office Action, Claims 1-25 were pending in the Application. Applicant amends Claims 1, 7, 13, 19, and 25 and cancels Claims 5, 6, 11, 12, 17, 18, 23, and 24 without prejudice or disclaimer. The amendments and cancellations to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 103 Rejections

The Examiner rejects Claims 1-25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,400,954 issued to Khan (hereinafter "*Khan*") and further in view of U.S. Patent No. 6,408,005 issued to Fan et al. (hereinafter "*Fan*"), and U.S. Patent No. 6,744,767 issued to Chiu et al. (hereinafter "*Chiu*"). These rejections are respectfully traversed for the following reasons.

Applicant has made a series of amendments to the pending claims, at the direction of the Examiner, in order to place the claims in an allowable format. At this time, Applicant does not acquiesce to the propriety of the Examiner's suggested amendments. Moreover, Applicant reserves the right, at potentially a future time, to comment on this issue should Applicant deem it appropriate to do so.

Turning to the merits of the Office Action, Applicant respectfully notes that the Examiner has failed to satisfy each of the elements of non-obviousness, which are required to support a proper §103 analysis. According to MPEP §2143, to establish a prima facie case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to combine the references. Second, there must be a reasonable expectation of success. Third, the prior art combination of references must teach or suggest all the claim limitations. (See generally MPEP §2143.) As an initial matter, the Examiner has failed to meet his burden with respect to the third criteria of non-obviousness, as none of the references cited by the Examiner disclose all of the limitations of the pending claims.

For example, none of the references provide: transmitting traffic for a first service class in excess of bandwidth allocated to the first service class using unused bandwidth allocated to a third service class; and transmitting the traffic for the first service class in unused bandwidth remaining in a second service class in cases where a bandwidth requirement for the traffic is not met by using the unused bandwidth allocated to the third service class, wherein the second class comprises non-bursty traffic flows, and wherein the non-bursty traffic flows comprises voice traffic, as is recited in amended Independent Claim 1. The Examiner inherently concedes as much in proposing the tendered amendment suggestions. (See Current Office Action: page 2.) Although originally provided in the context of Independent Claim 25, similar reasoning would yield the same allowability of the other Independent Claims. This is because none of the references of record include the newly included limitations: particularly in the context of the system recited by the claims.

For at least these reasons, Independent Claim 1 is allowable over the *Chui-Khan-Fan* combination. In addition, Independent Claims 7, 13, 19, and 25 include a limitation that is similar, but not identical, to that of Independent Claim 1. These Independent Claims have also been amended in pursuant to the Examiner's proposal. Accordingly, these Independent Claims are also allowable over the proffered combination. Additionally, the dependent claims corresponding to these Independent Claims are also allowable for analogous reasons. Thus, all of the pending claims have been shown to be allowable, as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these pending claims.

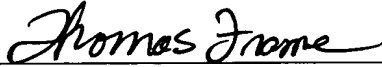
CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not the case, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas Frame at 214.953.6675.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



Thomas Frame
Reg. No. 47,232

Date: January 25, 2005

Customer No. **05073**